

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN**

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**IN RE NICOLE M TACKES**

**CASE NO. 3-24-10289-CJF**

**DEBTOR**

**CHAPTER 13**

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**OBJECTION TO CONFIRMATION AND REQUEST FOR HEARING**

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TO: Debtor, Attorney for Debtor; Noe Joseph Rincon , Chapter 13 Trustee; U.S.Trustee; and other parties in interest:

1. Capital One Auto Finance, a division of Capital One, N.A. (the "Respondent"), a secured creditor of Debtor, by its undersigned attorney, makes this objection to the confirmation of the proposed plan of Nicole M Tackes ("Debtor").

2. This objection is filed pursuant to Fed. R. Bankr. P. 3015(f) and Respondent requests this Court to enter an order denying confirmation of Debtor's Proposed Chapter 13 Plan (the "Plan"). This Court has jurisdiction over this objection pursuant to 28 U.S.C. Sec. 1334(a) and 157(a), 11 U.S.C. \$1325 and applicable rules. This is a core proceeding.

3. The petition commencing this Chapter 13 case was filed on February 16, 2024 and the case is now pending in this Court.

4. Respondent holds a security interest in the vehicle of Debtor identified as a 2014 GMC Acadia Utility 4D Denali AWD 3.6L V6, VIN: 1GKKVTKD8EJ104446 (the "Collateral"). Copies of the Motor Vehicle Retail Installment Sales Contract ("Contract") executed on May 26, 2021 and Evidence of Title are attached as Exhibits "A" and "B," respectively.

5. The Collateral was acquired for the personal use of Debtor.  
6. The balance owed at the time petition was filed was \$10,869.48.  
7. The Plan filed by Debtor proposes to pay Respondent's claim in the amount of \$5,116.00 at 8.500% interest over the term of 56 months.

8. Respondent objects to the Plan because (1) the Plan fails to pay the full replacement value of the Collateral.

9. In a Chapter 13 bankruptcy, a debtor may confirm a plan over a Respondent's objection only if the plan provides the Respondent the full value, as of the effective date of the plan, of the allowed amount of the secured claim. 11 U.S.C. § 1325(a)(5)(B). The allowed amount of such a claim is determined based on the replacement value a retail merchant would charge for a property of a similar age and condition 11 U.S.C. § 506(b).

10. The estimated replacement value based on the retail value of the Collateral is \$8,670.00. A copy of the vehicle valuation is attached as Exhibit "C."

11. If it is determined that Debtor fails to provide adequate, or any insurance coverage for the Vehicle, then Capital One Auto Finance, a division of Capital One, N.A. is inadequately protected on that basis as well.

**WHEREFORE**, Respondent prays that the Court to deny confirmation of the Chapter 13 Plan filed by Debtor and dismiss the Chapter 13 case, or, in the alternative, convert the case to a case under Chapter 7 of the Bankruptcy Code.

Respondent prays for such other and further relief to which it is justly entitled.

Dated: April 16, 2024

Respectfully submitted:

Evan Lincoln Moscov  
**EVAN LINCOLN MOSCOV**

LAW OFFICE OF EVAN MOSCOV  
P.O. Box 8305,  
Waukegan, IL 60079  
(312) 969-1977 (phone)  
(fax)  
evan.moscov@moscovlaw.com

Attorney for Respondent  
Capital One Auto Finance,  
a division of Capital One, N.A.

**UNITED STATES BANKRUPTCY COURT  
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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

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Evan Lincoln Moscov, attorney of Law Office of Evan Moscov, being an attorney admitted to practice law in this Court, with an office address of P.O. Box 8305 , Waukegan IL 60079, declares that on the date set forth below, a true and correct copy of Objection to Confirmation upon each of the parties named below by electronic transmission or by causing a copy to be mailed thereof by first class mail postage prepaid addressed to each of them as follows:

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*Debtor Via US Mail:*

Nicole M Tackes  
3902 Milwaukee Street, #7605  
Madison, WI 53707

*Chapter 13 Trustee via CM/ECF:*

Mark Harring  
122 West Washington Ave., Suite 500  
Madison, WI 53703  
court@ch13wdw.org

*US Trustee via CM/ECF:*

U.S. Trustee's Office  
780 Regent Street, Suite 304  
Madison, WI 53715  
USTPRegion11.MD.ECF@usdoj.gov

*Counsel for Debtor via CM/ECF:*

Noe Joseph Rincon  
Krekeler Law S.C.  
26 Schroeder Court, Suite 300  
Madison, WI 53711  
nrincon@ks-lawfirm.com

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I declare, under penalty of perjury, that the foregoing is true and correct.

Date: April 16, 2024

Signed: /s/ Evan Lincoln Moscov

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# LOAN AND SECURITY AGREEMENT

Reference [REDACTED]

Please carefully review this form, including the Vehicle Identification Number (VIN), then sign and date below. Only the original unaltered document will be accepted. Do not make any alterations to this form.

<b>CONSUMER CREDIT DOCUMENT</b>	Lender: <b>ATTN: COAF Refinance Capital One Auto Finance 7933 Preston Road Plano, TX 75024</b>	Borrower & Co-Borrower (if applicable):  Nicole Tackes
Application ID: Contract ID: Date: 05/20/21 Address: 813 NORTH THOMPSON DRIVE, 208 Madison, WI 53704	"We" and "us" mean the lender above, its successors and assigns.	"You" and "your" mean each borrower above jointly and individually.

## PROMISE TO PAY AND PAYMENT TERMS:

You promise to pay us the principal amount of \$ 12,701.00 \*, plus finance charges accruing on the unpaid balance at the Annual Percentage Rate of 14.06 % from the date we receive a signed contract until maturity. Payments are due pursuant to the Payment Schedule shown in the Truth in Lending Disclosures below and will be credited first to interest due, then to any fees due and owed. Thereafter, any excess payment will be applied to reduce principal. Finance charges accrue on a daily basis. After maturity, or after you default and we demand payment, we will earn finance charges on any unpaid balance at the Annual Percentage Rate of 14.06 %. You agree to pay additional amounts according to the terms and conditions of this Agreement.

**SECURITY:** To secure your payment and performance under the terms of this Agreement, you give us a security interest in the Motor Vehicle, identified by the Vehicle Identification Number (VIN) entered below; all accessions, attachments, accessories, and equipment placed in or on the Motor Vehicle, together called the Property; and proceeds of the Property. You also assign to us and give us a security interest in proceeds and premium refunds of any insurance purchased in accordance with this Agreement.

## TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE*	FINANCE CHARGE *	AMOUNT FINANCED *	Total of Payments *
The cost of your credit as a yearly rate.  14.06 %	The dollar amount the credit will cost you.  \$4,061.90	The amount of credit provided to you on your behalf.  \$12,701.00	The amount you will have paid when you have made all payments as scheduled.  \$16,762.90

**Payment Schedule:** Your payment schedule will be:

NUMBER OF PAYMENTS*	AMOUNT OF PAYMENTS *	WHEN PAYMENTS ARE DUE
49	\$342.10	Payments are due on the 15th day of each month, beginning at least 21 days after receipt of your signed contract.
<b>Security:</b> You are giving a security interest in the Motor Vehicle financed identified further by the VIN below.		
<b>Late Charge:</b> If your payment is more than 7 days late, you will pay the lesser of 5% of the late amount or \$40.00.		
<b>Prepayment:</b> If you pay off this Contract early, you will not have to pay a penalty.		
<b>Contract Provisions:</b> You can see the terms of this Contract for any additional information about nonpayment, default, required payment in full before scheduled date, and any prepayment.		

\*Please note that these amounts are estimates based on the information you submitted in your application. If information verified differs significantly from what you submitted, you will be notified by phone before the Agreement is processed and be given a chance to decline the adjusted terms.

**Vehicle Identification Number (VIN):** 1GKKVTKD8EJ104446

**Vehicle Model Year:** 2014

**Vehicle Make:** GMC

**Vehicle Model:** ACADIA

## CONSENT OF BORROWER

If the actual amount required to pay off your previous lender is higher than the amount originally quoted to you or to us by your previous lender, you consent to our paying the additional amount owed, and adding that amount to the balance of this loan. You understand that this may result in your monthly payments being an amount that is higher than stated on your offered terms.

By signing below, each Borrower agrees to the terms on both pages of this Agreement and acknowledges receipt of a copy of this Agreement.

		ITEMIZATION OF AMOUNT FINANCED*
Nicole Tackes	05/20/21	AMOUNT PAID TO PREVIOUS LENDER TITLING FEE
Signature of Borrower	Date	\$ 12,691.00 \$ 10.00
		\$ 12,701.00 \$ 4,061.90
Signature of Co-Borrower	Date	TOTAL OF PAYMENTS \$ 16,762.90

Exhibit A

## ADDITIONAL TERMS AND CONDITIONS

Reference [REDACTED]

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

**GOVERNING LAW AND GENERAL TERMS:** You agree that the terms of this Agreement are governed by Federal law and the laws of the state of Virginia. We reserve the right to verify that the prior lender or lien holder is a valid lending institution and if not, we reserve the right to not fund the loan. We do not intend to charge or collect, and you do not agree to pay, any finance charge or fee that is more than the amount permitted by law. If you pay a finance charge or fee that is contrary to this provision, we will apply it first to reduce the principal balance, and when the principal has been paid in full, refund any overpayment to you. Any prohibited or unenforceable provision under law will not affect the enforceability of the rest of the Agreement.

**PREPAYMENT:** You may prepay this loan in full or in part at any time.

**OWNERSHIP AND DUTIES TOWARD PROPERTY:** By giving us a security interest in the Motor Vehicle, you represent and agree to the following:

- Our security interest will not extend to consumer goods unless you acquire rights to them within 10 days after we enter into this Agreement, or they are installed in or affixed to the Motor Vehicle.
- The security interest you are giving us in the Property comes ahead of the claim of any third party, including your general or secured creditors. You will do whatever is necessary to keep our claim to the Property ahead of the claim of anyone else, including providing us with your title, if you hold it, to note our lien on the title; signing any additional documents or providing us with any additional information we may require. You will not do anything to change our interest in the Property.
- You will keep the Property in your possession in good condition and repair. You will not use the Property or permit the Property to be used improperly, illegally, or for commercial use or hire. Unless otherwise agreed in writing, the Property will be located at your address listed on the front of this Agreement.
- You will not attempt to sell the Property or otherwise transfer any rights in the Property to anyone else, without our prior written consent.
- You will pay all taxes and assessments on the Property as they become due, including all Filing Fees and Official State Fees.
- You will notify us of any loss or damage to the Property. You will provide us reasonable access to the Property for the purpose of inspection. Our entry and inspection must be accomplished lawfully, and without breaching the peace.

**DEFAULT:** You will be in default on this Agreement if any one of the following occurs (except as prohibited by law):

- You fail to perform any obligation that you have undertaken in this Agreement, including, but not limited to, your obligations to make payments and keep the Motor Vehicle insured.
- You make any statement or provide any financial information that is untrue or inaccurate at the time it was given.
- Any government authorities confiscate the Property.
- You die or are involved in any insolvency proceedings brought by or against you; any of your other creditors accelerate a debt owing to them; a judgment against you becomes final; or a tax lien is filed against you or an attachment or garnishment is issued against any of your property or rights, or we, in good faith, believe that you cannot, or will not, pay or perform the obligations you have agreed to in this Agreement.

If you default and if allowed by law, you agree to pay court costs we incur to collect this Agreement as well as reasonable attorneys' fees if we refer this Agreement for collection to an attorney who is not our salaried employee. If any one of you defaults, we may exercise our remedies against any or all of you.

**REMEDIES:** Subject to any refund, notices and rights to cure default required by law, if you are in default on this Agreement, we have all of the remedies provided by law and this Agreement. They include the following:

- We may require you to immediately pay us the remaining unpaid balance of the amount financed, finance charges and all other agreed charges.
- We may, but are not required to, pay taxes, assessments or other liens, or make repairs to the Property if you have not done so. Any amount we pay will be added to the amount you owe us and will be due immediately. This amount will earn finance charges from the date paid at the post-maturity rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.
- We may require you to make the Property available to us at a place we designate that is reasonably convenient to you and us.
- We may immediately take possession of the Property by legal process or self-help, but in doing so we may not breach the peace or unlawfully enter onto your premises. We may then sell the Property and apply what we receive as provided by law to our reasonable expenses and then toward your obligations.
- Except when prohibited by law, we may sue you for additional amounts if the proceeds of a sale do not pay all of the amounts you owe us.

By choosing one or more of these remedies, we do not waive our right to later use another remedy. By deciding not to use any remedy, we do not give up our right to consider the event a default if it happens again. You agree that if any notice is required to be given to you of an intended sale or transfer of the Property, notice is reasonable if mailed to your last known address, as reflected in our records, at least 10 days before the date of the intended sale or transfer (or such other period of time as is required by law). You agree that, subject to your right to recover such personal property or to reinstate the loan, if applicable, we may take possession of personal property left in or on the Property securing this Contract and taken into possession as provided above. We will send you written notice within 15 days of possession of such personal property at your last known address. If you fail to claim the personal property as provided in the notice, we may retain or dispose of the personal property and disperse the proceeds, according to applicable law.

**INSURANCE:** You agree to maintain comprehensive insurance and collision insurance, protecting against loss and physical damage, not to exceed maximum deductibles of \$1,000 on your Motor Vehicle during the entire time this loan is outstanding.

You will name us as loss payee on any such policy. In the event of loss or damage to the Motor Vehicle, we may require additional security or assurances of payment before we allow insurance proceeds to be used to repair or replace the Motor Vehicle. You agree that if the insurance proceeds do not cover the amounts you still owe us, you will pay the difference. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. You will keep the insurance in full force and effect until this Agreement is paid in full. If you fail to obtain or maintain this insurance, or name us as a loss payee, we may obtain insurance to protect our interest in the Motor Vehicle. A company other than one you would choose may write this insurance. It may be written at a rate higher than a rate you could obtain if you purchased the property insurance required by this Agreement. We will add the premium for this insurance to the amount you owe us. Any amount we pay will be due immediately or at the end of your loan term as we may specify. This amount will earn finance charges from the date paid at the post-maturity rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.

**OBLIGATIONS INDEPENDENT:** Each person who signs this Agreement agrees to pay this loan according to its terms. This means the following:

- You must pay this loan even if someone else has also signed this Agreement. • We may release the co-buyer or guarantor and you will still be obligated to pay this loan.
- We may release any security and you will still be obligated to pay this loan. • If we give up any of our rights, it will not affect your duty to pay this loan.
- If we extend new credit or renew this Agreement, it will not affect your duty to pay this loan.

**WAIVER:** To the extent permitted by law, you agree to give up your rights to require us to do certain things. We are not required to: (1) demand payment of amounts due; (2) give notice that amounts due have not been paid, or have not been paid in the appropriate amount, time or manner; or (3) give notice that we intend to make, or are making, this Contract immediately due.

**MILITARY LENDING ACT (MLA):** Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: The costs associated with credit insurance premiums; fees for ancillary products sold in connection with the credit transaction; any application fee charged (other than certain application fees for specified credit transactions or accounts); and any participation fee charged (other than certain participation fees for a credit card account). To obtain this disclosure orally and to hear a general description of your payment obligations under a refinanced loan with Capital One, please contact us toll-free at: 1-844-648-5845.

During any period in which the Military Lending Act ("the Act") applies to you, no provision of your Agreement that is inconsistent with the Act shall apply and your Agreement shall be interpreted to comply with the Act.

Exhibit A



## Wisconsin Vehicle Record

Retrieved On: Thu March 28, 2024 11:44:29 AM EDT

Registration Data	Vehicle Data	Title Data
Tag: [REDACTED]	VIN: 1GKKVTKD8EJ104446	Title: T4044L2940028
Issue Date: 07/01/2023	Year: 2014	Issue Date: 02/13/2024
Exp. Date: 06/30/2024	Make: GMC	Odo Read: 120775
Co. Res: DANE	Model: ACADIA	Odo Status: ACTUAL
Reg. Status: VALID	Trim: Denali*	Odo Date: 06/23/2020
Type: AUT	Body: 4D SUV AWD*	Prev. State: IL
Plate Type: AUT	Color: SILVER/ALUMINUM	
	Curb Weight: 4,850*	
	Fuel Type: Gas	
	Style: SPORTUTILITY	
	Gross Weight Rating: 6,001 - 10,000	

## Vehicle Interests

**Primary Owner** TACKES NICOLE MARIE  
813 N THOMPSON DR # 208  
MADISON, WI 53704-7897

**Primary Owner** TACKES NICOLE MARIE  
Address: 813 N THOMPSON DR # 208  
MADISON, WI 53704-7897  
Mailing: 813 N THOMPSON DR # 208  
MADISON, WI 53704-7897

**Lienholder 1** CAPITAL ONE AUTO FINANCE  
PO BOX 660068  
SACRAMENTO, CA 95866

**Lien Date:** 07-15-2021  
**Activity:** LISTED

(DPPA 3) Verify information submitted by individual; if info not correct, to obtain correct info to prevent fraud, pursue legal remedies against or recovery of debt.

This information is provided by the Wisconsin Department of Transportation (WisDOT). Auto Data Direct, Inc. is an authorized provider of real-time Wisconsin motor vehicle data. Auto Data Direct, Inc. is not responsible for the unauthorized use of the information provided from the WisDOT database.

This Motor Vehicle Record is extracted directly from the State or Jurisdiction's official Motor Vehicle Records database, in real time. The authenticity of these records may be authenticated in real time using the ADD on-line authorization system.

Personal information (including, but not limited to: name, address, date of birth, DL number) appearing on driver and vehicle records is protected by the Driver Privacy Protection Act (DPPA). The use of personal information for reasons not allowed by the DPPA will result in loss of information access privileges and may result in legal action.

This record must not be reproduced, reused or resold.

**Any person who knowingly discloses any information in violation of the Driver Privacy Protection Act (DPPA) may be subject to criminal sanctions and civil liability specified in law for unauthorized use of the data.**

\* Field information provided by Auto Data Direct, Inc.

# N.A.D.A. Official Used Car Guide

## Vehicle Valuation

Print Date: April 9, 2024

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Customer: Tackes, Nicole

File No.: COAF-[REDACTED]

Vehicle Description: 2014 GMC Acadia Utility 4D Denali AWD 3.6

VIN: 1GKKVTKD8EJ104446

### **Base Values**

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Retail: \$ 12350.00      Wholesale/Trade-in: \$ 9200.00

### **Optional Equipment/Adjustments**

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Estimated Miles 200000 \$ -3680.00

### **Total Adjusted N.A.D.A. Used Car Guide Values**

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Retail: \$ 8670.00      Retail/Wholesale Average: \$ 7095.00

Reference 02/2024 Central